

JUL 16 2007

Appl. No. 10/724,665
Amendment
Docket No. KFHI-113

REMARKS

Claims 1-17, 19-26, 28, and 30-52 are pending herein. By this Amendment, Claims 1, 15, 19, and 28 are amended, new Claims 51-52 are added, and Claims 18, 27, and 29 have been cancelled without prejudice or disclaimer. Support for the claim amendments and new claims is found in the specification at, *inter alia*, paragraphs [0016], [0018], [0019], [0037], [0040], [0043], [0047], and [0060], and original Claims 18, 27, and 29. No new matter is added by this Amendment.

Examiner Lien Tran is thanked for the courtesy of a July 12, 2007 telephonic interview with applicant's undersigned attorney, Barry I. Hollander. During the interview, the undersigned inquired whether claim 29 was allowable except for the rejection under 35 U.S.C. 112, second paragraph. Examiner Tran advised that the omission of claim 29 from the rejection under 35 U.S.C. 103(a) as being unpatentable over the cookbook in view of Gimmler et al and further in view of Sato was a typographical error, and that Claim 29 should be included in the rejection of Claims 27-28. The undersigned also requested a copy of pages 32-33 and 133 which are mentioned on page 34 of the cookbook reference (The Good Cook Cookies and Crackers, 1982), and inquired whether pregelatinized waxy starch was disclosed on those pages of the cookbook reference. The Examiner advised the undersigned that pages 32, 33, and 133 did not disclose a pregelatinized waxy starch and that she would list these pages on form PTO-892.

I. RESTRICTION REQUIREMENT

Applicants respectfully maintain that the restriction requirement is improper. The Examiner maintains that with respect to the method claims and apparatus claims (Groups

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I and II), the determination for a restriction requirement is not what the claimed apparatus recites but that the apparatus as claimed can be used to perform other process. However, the claimed apparatus and the apparatus as claimed are the same. The apparatus as claimed is for making chips, as is the method as claimed. The Examiner asserts that the apparatus can be used with other processes such as plastic processing because a plastic can exist as a flat piece which can be placed under the roller and the plastic is flexible and can be rolled under the roller to curve it. However the apparatus claims recite a chip, and not plastic. Also, even if plastic is flexible, that does not mean it will retain a curved shape from rolling. In fact, if it is flexible, it will return to its original flat shape.

II. FORMAL MATTERS

Claims 15-29 are rejected under 35 U.S.C. 112, first paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. This rejection is respectfully traversed. The terms thin, crispy, flexible and chip-like are not indefinite in the context of a chip, as claimed, to those skilled in the art. Also, in the context of the claims, the thinness and flexibility are such so as to permit forming into a curved or wave configuration on a rotating roller. Also, the term chip-like refers to the texture, as clearly recited in claim 15. Furthermore, the terms are used in the art as exemplified in WO 96/01572 at page 2 line 29, U.S. Patent No. 5,747,092 to Carey et al at col. 1 line 6, col. 5 lines 37-40, and 45-49, and col. 10 line 38. In addition, the present specification provides guidance to those skilled in the art as to meaning of the terms as at paragraphs [0033] and [0035].

Reconsideration and withdrawal of the rejection is respectfully requested.

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III. REJECTIONS UNDER 35 U.S.C. 103(a)

Claims 15-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the book "The Good Cook Cookies & Crackers" in view of Gimmler et al. U.S. Patent 5,523,106. This rejection is respectfully traversed. The references, taken alone or in combination do not teach or suggest forming thin, flexible cookies into a curved or wave configuration on a rotating roller, and cooling the flexible cookies with air to set the cookies in the curved or wave configuration while on the rotating roller as claimed. Also, the use of a pregelatinized waxy maize starch to increase the time during which the flexible cookie remains sufficiently malleable for forming into a curved or wave configuration is not taught or suggested by the references.

The Examiner admits that the Good Cook does not teach the use of a pregelatinized starch or cooling on a rotating roller. The Good Cook discloses pressing a warm wafer against a rolling pin to form curved disks that resemble roof tiles. The rolling pin is not rotated to form the curved shape, and the rolling pin is not rotated while the flexible cookies are cooled with air to set the cookies. The method of the Good Cook is a hand method, and not a high speed, continuous method as can be achieved with a rotating roller. According to the Good Cook, "The key to successful shaping lies in baking only a few wafers at a time and shaping them as soon as you remove them from the oven." See page 34 second paragraph. Clearly use of a rotating roller is not contemplated and the reference indicates that methods which bake and shape more than a few wafers at a time are not likely to succeed.

The Examiner alleges that it would have been obvious to cool the cookies and bake the cookies on any apparatus that is available and is deemed convenient to the setting in which the product is made. However, it is not seen how a rotating roller could be used in

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the process of the Good Cook, or how a continuous baking oven could be used in view of the Good Cook teaching that the key to successful shaping lies in baking only a few wafers at a time.

Gimmler et al does not cure any of the deficiencies in the disclosure of the Good Cook, and even if the references were properly combinable, applicant's claimed method would not be obtained. Gimmler et al relates to the production of juice-based snacks and has nothing to do with forming curved or wave configurations, and does not teach or suggest use of a rotating roller to achieve such configurations. The Examiner relies upon Gimmler et al for the disclosure that a pregelatinized starch imparts a longer lasting mouthfeel to the snack product and increases its mastication properties. The Examiner maintains that it would be obvious to employ the pregelatinized starch of Gimmler et al in the batter of the Good Cook if a longer lasting mouthfeel and increased mastication properties were desired.

However, as discussed with the Examiner during the telephonic interview, the Good Cook teaches away from the use of a pregelatinized starch. According to the Good Cook reducing the quantity of flour in the batter produces wafers that while still warm from the oven are flexible enough to be bent into curved shapes. The main component of flour is starch, and the starch in a batter is gelatinized during baking. Accordingly, adding a pregelatinized starch to the batter of the Good Cook as proposed by the Examiner would be expected to reduce flexibility of the wafers of the Good Book and would be contrary to its teaching.

Use of a pregelatinized waxy maize starch to increase the time during which the baked chip pieces remain sufficiently malleable for post-bake forming into curved or wave chip products is simply not taught or suggested by the references. As disclosed in

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the present specification, it is believed that the film-forming pregelatinized starch forms a thin film which helps to trap and retain moisture for malleability. See paragraphs [0019] and [0060].

Additional, neither reference taken alone or in combination teaches or suggests using a curtain of air to set the cookies in a curved or wave configuration while on a rotating roller as claimed in claim 17.

Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cookbook in view of Gimmler et al. and further in view of Sato U.S. Patent 4,110,482. As discussed with the Examiner during the telephonic interview, claim 29 was intended to be included in this rejection, and is treated as such. Also, as discussed, the rejection relies upon Dawes et al WO 96/01572 in the body of the rejection but not in the statement of the grounds of rejection. As agreed with the Examiner, the Dawes et al reference will be addressed in this response as if it were included in the statement of the grounds of rejection. This rejection is respectfully traversed.

The arguments above regarding the Good Cook cookbook and Gimmler et al are applicable here and are incorporated here in their entirety. Neither Sato nor Dawes et al, taken alone or in combination with the Good Cook and Gimmler teach or suggest the methods of claims 27-29. Claim 27 has been cancelled without prejudice or disclaimer and has been incorporated into claim 15. The Examiner admits that the cookbook does not teach forming the curve or wave on a rotating roller. It is alleged by the Examiner that it would have been obvious to one skilled in the art to use other known apparatus such as the one of Dawes et al to form the curve configuration when desiring to automate

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the step of shaping because cookies are known to be passed under a rotating roller to form a curve as shown by Sato.

However, the Dawes et al apparatus is used to form a ripple chip-type product. An uncooked dough sheet 21, not baked cookies are formed using the apparatus of Dawes et al. The dough is formed into a sheet 21 by passing between counter-rotating rolls 14 and 15. The dough sheet 21 is then embossed on one side with ripples by passing between front mill roll 14 and embossing mill 18. The apparatus produces a flat raw dough sheet, not curved cookies as desired by Good Cook. Modification of the Good Cook method using the apparatus of Dawes et al would not result in nor render obvious forming thin, flexible cookies into a curved or wave configuration on a rotating roller, and cooling the flexible cookies with air to set the cookies in the curved or wave configuration while on the rotating roller as claimed.

Sato discloses the production of a completely rolled product 2" as shown in FIGS. 1, 10, 11, and 12. In the Sato method, cookie sheets 2 on a belt conveyor 1 are caused to bend around a roll up roller 6 until it meets a stop member or deflector 8 which prevents further wrap around of the sheet material on roll-up roller 6. The sheet material is pulled away as indicated in FIG. 8 to a point at which the outer surface of the partially wound cookie sheet material 2' engages against a roughened surface or friction surface 7a of a roll-up board 7. Friction surface 7a causes a holding action on the initially wound coil portion of the cookie sheet material so that the remaining portion will feed around beneath this coil and cause the continuous winding thereof as indicated in FIG. 9. See col. 3 lines 5-49. Thus, in the Sato method, the curved configuration is not set while the cookie is on a rotating roller, because the cookie is removed from the roller while it is still malleable and it is subsequently formed into a complete roll using the friction surface 7a.

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The cooling and form-retaining stages are subsequent to the forming stage as disclosed at col. 4 lines 65-68. The references simply do not teach or suggest forming the curved shape on a rotating roller and cooling the cookies with air to set the cookies in the curved or wave configuration while on the rotating roller as claimed.

Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-6, and 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato. This rejection is respectfully traversed. Sato et al does not teach or suggest curving or curling malleable baked chips around a roller, subjecting the malleable baked chips to a curtain of air to cool and set the chips in a curved or wave configuration while on the rotating roller and using the curtain of air to remove the curved or wave chips off of the rotating forming roller, as claimed.

The Examiner maintains that the language of the claims do not exclude other steps disclosed in Sato. However, the Sato reference does not disclose steps recited in the claims. The Sato reference is discussed in detail above, and those comments are applicable here. As discussed above, in the Sato method, the curved configuration is not set while the cookie is on a rotating roller as claimed, because the cookie is removed from the roller while it is still malleable and it is subsequently formed into a complete roll using the friction surface 7a. The cooling and form-retaining stages are subsequent to the forming stage as disclosed at col. 4 lines 65-68. Furthermore, subjecting the malleable baked chips to a curtain of air to set the chips while on the rotating roller and using the curtain of air to remove the set chips from the rotating roller is not taught or suggested by Sato.

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Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sato in view of Gimmler. This rejection is respectfully traversed.

Gimmler et al does not cure the deficiencies in the disclosure of Sato discussed above, and even if the references were properly combinable, applicant's claimed method would not be obtained. Gimmler et al relates to the production of juice-based snacks and has nothing to do with forming curved or wave configurations, and does not teach or suggest use of a rotating roller to achieve such configurations.

The Examiner relies upon Gimmler et al for the disclosure that a pregelatinized starch imparts a longer lasting mouthfeel to the snack product and increases its mastication properties. The Examiner maintains that it would be obvious to employ the pregelatinized starch of Gimmler et al in the cookies of Sato if a longer lasting mouthfeel and increased mastication properties were desired. However, no reasons have been given as to why a longer lasting mouthfeel and increased mastication properties would be desired in the products of Sato. Gimmler et al desires to turn a juice into a product that has a texture, mouthfeel, and cell structure that resembles a cookie, cracker, or expanded snack. See col. 2 lines 28-36. However, the Sato product is already a cookie, so there would be no desire to add a pregelatinized starch to the Sato et al composition which already has the texture, mouthfeel, and cell structure of a cookie.

Reconsideration and withdrawal of the rejection is respectfully requested.

IV. CONCLUSION

In light of the foregoing remarks, this application is in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this Amendment or the application in general, a telephone call to the

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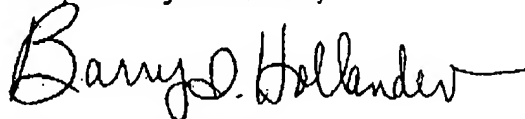
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undersigned would be appreciated since this should expedite the prosecution of the application.

Any additional fees should be charged to, or any overpayment in fees should be credited to, Deposit Account No. 501032 (Docket #KFHI-113).

Respectfully submitted,



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